

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

IN RE ST. JUDE MEDICAL, INC., :
SILZONE® HEART VALVES PRODUCTS :
LIABILITY LITIGATION : MDL DOCKET NO. 1396

JOINT STATUS CONFERENCE REPORT

(February 12, 2004 Status Conference)

The parties have met and conferred and respectfully submit this Joint Status Conference Statement in anticipation of the February 12, 2004 status conference.

**I. APPOINTMENT OF END GAME COMMITTEE AND SETTLEMENT
MEDIATOR.**

St. Jude Medical has appointed the following individuals to serve on the End Game

Committee:

1. Tracy Van Steenburgh
2. Steven Kohn or David Stanley
3. In-house representative of St. Jude Medical

Plaintiffs' Executive Committee is in the process of selecting End Game Committee Members and has requested that the Plaintiffs' Executive Committee meet with the Court outside St. Jude's Medical's presence at the February 12, 2004 status conference to discuss this particular issue.

With regard to the appointment of a Settlement Mediator, the parties hope to agree on a mediator shortly in order to initiate a program to resolve the individual personal injury actions.

Plaintiffs supplied St. Jude Medical with the names of six (6) candidates for mediator. St. Jude Medical agreed to one of those candidates. Unfortunately, the candidate declined the position based upon a conflict. St. Jude Medical is considering the other 5 candidates as well as others not on Plaintiffs' list and will have a position by the time of the Status Conference.

In light of the impending establishment of a settlement process (which St. Jude Medical believes should focus on the individual actions) and, as explained more fully below, the motion to decertify that St. Jude Medical will be filing shortly, St. Jude Medical requests that the Court stay discovery for 90 days and extend the generic and case specific discovery deadlines set forth in PTO 29 for a period of 90 days beyond the present deadlines. St. Jude Medical believes that this will be the most efficient use of the resources of the parties and the court and enable the parties to devote their efforts toward settlement of the individual injury cases during this time.

II. MOTION TO DECERTIFY

St. Jude Medical believes that the Court acknowledged in its January 5, 2004, Order that its decision on the conditionally certified claims may create issues for the class involving consumer fraud statutes and invited "discussion of the propriety of such a limited class" at the last status conference. As raised previously in its Rule 23(f) Petition and mentioned at prior status conferences with the Court, St. Jude Medical has identified a number of what it considers to be problematic aspects to any certification of a class concerning consumer statutes, especially in light of the decertification of the personal injury class and the substantial modification to the medical monitoring class. As a result, on or before March 9, 2004, St Jude Medical will file a motion to decertify the class previously certified based on the Minnesota consumer fraud statutes.

St. Jude Medical's decertification motion will urge that Plaintiffs are trying to use Minnesota's consumer fraud statutes to certify classes that the Court already has held do not meet Rule 23. Given the relief that Plaintiffs seek under their consumer fraud class, the motion will show that Plaintiffs' class (as evident from their Trial Plan) is an inappropriate nationwide application of Minnesota's statutes (which do not provide the remedies that Plaintiffs seek in any event) and that the class fails to satisfy the prerequisites for Rule 23 in light of the claims made and the relief sought. St. Jude Medical will also show that the pursuit of a consumer fraud class is not the superior method for resolution and that prosecuting such a class on a nationwide basis violates the Constitution. The parties have not agreed upon a time frame for the filing of such a motion or Plaintiffs' response.

Plaintiffs do not believe that the Court left open the issue of the certified consumer fraud class. In fact, at the last status conference, the Court directed the parties to meet and confer on the issue of proceeding on two tracks- consumer fraud and medical monitoring- and to report to the Court at the February status conference as to the problems or lack thereof of proceeding in such a fashion. Further, the Court specifically stated in its January 5, 2004 decision that "[t]he previously certified class based on the Minnesota Consumer Fraud laws will remain certified." (Opinion at p. 2) With respect to the two track meet and confer, despite Plaintiffs having submitted a proposed trial plan, Plaintiffs have received no response from St. Jude Medical.

Further, Plaintiffs do not believe oral argument now or in the immediate future is required as Plaintiffs do not believe that St. Jude Medical has the right at this time to file such a motion, especially without leave of Court. This Court has fully reviewed these issues on two occasions and has determined that a consumer fraud class under Minnesota's consumer fraud laws is proper, that such a class meets all the requirements of Rule 23 and that plaintiffs are

proper class representatives. The recoveries sought on behalf of the class as articulated in the Trial Plan make clear that none of the problems the Court perceived with a nationwide personal injury class exist.

Additionally, Plaintiffs believe that St. Jude Medical's proposal is procedurally flawed. First, Plaintiffs believe that St. Jude Medical must request leave to file a motion for reconsideration. Plaintiffs contend that a motion to decertify will simply a rehash arguments already made to the Court and that no compelling circumstances warrant this motion. And plaintiffs contend that a certification decision once made can only be altered or amended before the decision on the merits, "if, upon further development of the facts, the original determination appears unsound." *Advisory Committee Notes* to Rule 23.

In response, St. Jude Medical emphasizes that its motion to decertify is not a motion for reconsideration and will be brought based on circumstances that have changed significantly since the Court's Memorandum and Order Re Class and Subclass Certification. Plaintiffs' recently filed trial plan demonstrates that Plaintiffs are pursuing the same relief -- damages and medical monitoring -- on a nationwide basis for all Silzone patients (injured and non-injured), even though the Court has already held that classes seeking exactly these remedies do not satisfy Rule 23. Further, the Court's recent order regarding class and subclass certification expressly questioned the "propriety" of a limited consumer protection class. There are in fact significant questions. For example, St. Jude Medical will argue that Rule 23 does not allow class representatives to split the class members' damages claims as Plaintiffs are proposing here, because of the adverse preclusive effects that claim splitting will have on the absent class members' rights. Further, St. Jude Medical questions whether a dual resolution system -- a class action for consumer protection claims and individual actions for other damages claims -- is a

superior resolution method. Even Plaintiffs' trial plan contemplates individual "proof of claim" for every class member in connection with the consumer fraud claims. Because issues like these must be resolved before class notice, let alone a class trial, can proceed, St. Jude Medical will place them before the Court in a decertification motion. This Court has the right and the duty to reexamine class certification decisions and to decertify a class when it is apparent from the claims made and relief sought that the class cannot meet the demands of Rule 23 and the Constitution.

As indicated above, St. Jude Medical requests a stay of discovery and extension of discovery deadlines in light of the impending establishment of a settlement process and the motion to decertify. Plaintiffs object to this request and believe that St. Jude Medical's effort to seek decertification is inappropriate and untimely.

III. PLAINTIFFS MOTION TO RECONSIDER

Plaintiff's Motion to Reconsider the Court's January 5, 2004, order concerning the scope of Class I was filed on February 6, 2004. St. Jude Medical's opposition is due on February 25, 2004. In addition to responding to Plaintiffs' Motion to Reconsider, St. Jude Medical will provide briefing on substantive state medical monitoring law, as the Court acknowledged it would allow in its Memorandum Opinion and Order on Motion for Class and Subclass Certification. St. Jude Medical will urge the Court to further limit or decertify the medical monitoring class. If necessary, St. Jude Medical will style its briefing as an opposition and cross-motion, giving Plaintiffs an opportunity to respond. The parties request that the Court schedule oral argument on this motion and the related issues identified above which flow from the motion.

Plaintiffs strongly disagree with St. Jude Medical's interpretation of the Court's Order. The Court did not afford St. Jude Medical an opportunity to provide "briefing on substantive state medical monitoring law" but rather, permission "to submit additional briefing on the state of medical monitoring law in the remaining jurisdictions." (Opinion at p.24-25) Plaintiffs contend that without seeking leave for reconsideration, St. Jude Medical again suggests that they have the right to seek decertification of the conditionally certified medical monitoring class. Plaintiffs contend that such a request must be rejected as improper and untimely. Plaintiffs contend that St. Jude Medical has offered the Court no basis for such a request especially in light of the extensive briefing and argument on the issues in the past. The only aspect of this section with which Plaintiffs agree is that argument on their motion for reconsideration to include the subclass of states permitting medical monitoring with presence of injury should be scheduled at as early a date as possible so that Plaintiffs can then identify class representatives and submit a manageable trial plan. (See January 5, 2004 Order) St. Jude Medical has no objection to proceeding with Plaintiffs Motion for Reconsideration on a separate track from any motion to decertify. Plaintiffs do not believe that any motion to decertify is appropriate.

IV. PRIVILEGE LOG

As discussed at the last Status Conference, St Jude Medical has reviewed the 350 documents which it believes are entitled to attorney-client and/or work product protection. As a result of that review, 60 documents were removed from the privilege log and released to plaintiffs. The remaining documents have been submitted to Special Master Solum for his review. St Jude Medical has also provided plaintiffs and the Special Master with briefing related to those documents.

Plaintiffs will submit a brief to the Special Master stating their position on or before February 20, 2004.

V. MOTION FOR INTERLOCUTORY APPEAL REGARDING PREEMPTION

St. Jude Medical is still reviewing the court's order denying its motion for summary judgment regarding preemption and continues to contemplate its appellate options, including a request to certify the issue for immediate interlocutory appeal. Plaintiffs will oppose St. Jude Medical's request for interlocutory appeal if sought.

VI. DISCOVERY

As indicated above, St. Jude Medical requests that the Court stay discovery for 90 days and extend the generic and case specific discovery deadlines set forth in PTO 29 for a period of 90 days beyond the present deadlines so that the parties to devote their efforts toward settlement of the individual injury cases during this time. This proposal will actually facilitate an acceleration of the mediation schedule set forth in PTO 29 which calls for such mediations to take place in September and October 2004. St. Jude Medical reiterates that the time and resources of the parties should be devoted toward the settlement of the individual cases and not discovery which can likely be avoided if the individual cases resolve.

Although St. Jude Medical believes that discovery should be stayed, Plaintiffs firmly believe that no further delay can be permitted. While St. Jude Medical argues that it wants to try and resolve the individual cases, Plaintiffs contend that St. Jude Medical wants to prevent Plaintiffs from completing generic merits discovery and delay the remand process for cases that do not settle; discovery critical not only to the class but the individual cases as well. St. Jude Medical disputes this and contends that they are merely asking for a brief stay so that the Court can rule on the motion to decertify and the parties can devote their efforts and resources toward

settlement of the individual injury cases. Plaintiffs also suspect that at the time they supply the foregoing information, St. Jude Medical will use that opportunity for yet another request to decertify the class. St. Jude Medical has no way of responding to Plaintiffs' suspicions without having reviewed the proposed trial plan.

In effort to move discovery along, on January 30, 2004, the Plaintiffs' Steering Committee supplied St. Jude Medical with the names of 10 witnesses to depose. St. Jude Medical has only responded with respect to one of them and his deposition has been scheduled for March 23, 2004. Plaintiffs are unaware as to the reason for the delay in providing any further deposition dates especially since Plaintiffs indicated that they wanted to complete those depositions between February 16 and March 15 so that additional depositions could then be scheduled. Despite that request, the only deposition date provided was eight days beyond the initial discovery window proposed by Plaintiffs. St. Jude Medical reiterates that a brief stay at this time will facilitate the resolution of the motion to decertify and allow the parties to devote their efforts and resources toward settlement of the individual injury cases.

DATED:

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By:

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